

The U.S. Department of Labor (DOL) has issued “compliance assistance” for employers and employees to better understand the recently passed Families First Coronavirus Response Act. These are not the implementing regulations we are all waiting for but they do shed some light on a few topics. By way of quick summary:

1. The DOL will be using April 1, 2020, as the effective date, a day earlier than the 15-day deadline that was set by the statute. That means employers who provide benefits under this new law can claim 100% payroll tax credit starting a day earlier than anticipated.
2. Although the regulations clarifying how the exemption for small employers (those with fewer than 50 employees) haven’t been issued yet, it appears this exemption is in the works, since the DOL notes that:

“To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.”

The criterion, as stated in the law, is that "the imposition of such requirements would jeopardize the viability of the business as a going concern." That is, your business will fail and you will need to close permanently if you are compelled to provide these benefits.

3. DOL provided a clarification that when calculating pay due to employees, employers need to include overtime hours (but the paid sick leave is still capped at 80 hours total).
4. DOL confirmed that an employer cannot deny leave after April 1 just because they provided some paid leave for a similar reason before that date. This is a new type of leave. They also clarified that this leave is not retroactive — you cannot receive tax credits for leave you gave prior to April 1.

For specific DOL language on employer requirements, see:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

For employee requirements, see:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

For general FAQ, see:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Source: Raphael Moore, general counsel, Veterinary Information Network. Published March 25, 2020.